

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9634 OF 2018

ORDER:

The petitioners are accused Nos.1 to 6 in crime No.68 of 2018 of Jarugumalli Police Station, Prakasam District, registered for the offences punishable under Sections 323 r/w 34 IPC and Sections 3(1)(r)&(s) and 3(2)(va) of SC & ST (POA) Amended Act (for short 'the Act'). They are seeking anticipatory bail.

It is the contention of the learned counsel for the petitioners with reference to the averments and oral submissions and also from the additional material filed that the defacto complainant and other persons want to knock away the endowment property that was originally taken for lease on value including by filing representations for estimations alleged and crop hit by draught to avoid the payment to the deity of the legitimate rent even and when ultimately they surrendered and the property sought for auction by the Department, the accused persons chosen to participate and having bore grudge the false report is foisted by the defacto complainant with privy with other witnesses cited by abusing the statutory provision of the SC & ST amended Act. It is thereby contended that it is a false case and they are entitled to the concession of the anticipatory bail.

Learned Public Prosecutor opposed the same.

Heard learned counsel for the petitioners and perused the FIR, bail application averments and additional material and the part-I case diary.

So far as the alleged beating in the report of the defacto complainant recorded by police from the MLC intimation, on 23.08.2018 at 01.20 PM in registration by 05.00 PM of the alleged occurrence at 11.00 AM on that day was that when the defacto complainant came to participate in the public auction of the land of Chennakesavaswamy Temple to pay deposits, the accused persons who were there of interrelated and raised unnecessary galata and among them Ram Babu-A.1 by abusing her Yaanaadi Munda and further indecently including abused her late mother in questioning why she chosen to come to participate in the auction of the temple lands and thrown her down and bet with hands and legs indiscriminately and chilli powder thrown on her by somebody. The persons by name K.Singamma, K.Padmavathi, K.Koteswaramma, K.Vara Prasad and D.Chenchu Ramiah saved her from the hands of the accused and she sustained injury to her right shoulder and at the stomach. She therefrom came to RIMS, Ongole and joined and police recorded her statement.

A perusal of the wound certificate mentioned allegedly assaulted with legs at her village and the 2 injuries are 1 cm x

½ cm contusion of right shoulder and ½ cm x ¼ cm abrasion at abdomen.

No doubt the offence under Section 323 IPC is bailable one. So far as attracting of special provisions of the Act particularly Sections 3(1)(r) & (s) concerned, the intentional insult by abusing in caste name with public view, it is only by A.1 and not by others even from the very report. What the report shows 5 or 6 persons saved from accused beating. So far as abuse concerned, it is mentioned in the presence of those persons, but for to infer if any. Even Section 3(1)(r)&(s) of the Special Act have no application to the facts, thereby Section 323 IPC and Section 3(2)(va) of the Special Act that applies.

Once such is the case, there is bar for anticipatory bail by virtue of Section 18 of the Act. Even the amended Act Section 18-A is a bar even to file application under Section 438 Cr.P.C., same can be taken under Section 482 Cr.P.C. as observed by this Court in **K.Srinivas @ Sivaswamy Vs. State of Andhra Pradesh rep. by its Public Prosecutor** in CrI.P.No.9119 of 2018 dated 31.08.2018.

Having regard to the above, this Criminal Petition is disposed of rather than dismissal by giving liberty to the petitioners to move the learned Special Judge with regular bail application by surrender and with notice to the learned Special Public Prosecutor and in such event, the learned

Special Judge shall grant bail with necessary conditions preferably on the same day.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 18.09.2018
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